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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 107

COFFEE COUNTY, TENNESSEE, PETITIONER

v.

CITY OF TULLAHOMA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is filed in response to the order of the Court, dated October 12, 1964, inviting the Solicitor General to file a brief expressing the views of the United States.

OPINIONS BELOW

The opinion of the district court is reported at 204 F. Supp. 794. The majority and dissenting opinions of the court of appeals (Pet. App. 1a–22a) [1] are reported at 328 F. 2d 683.

[1] "Pet. App." refers to the appendix to the petition for certiorari.

JURISDICTION

The judgment of the court of appeals was entered on February 22, 1964. The petition for a writ of certiorari was filed on May 20, 1964. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, in the absence of any provision of State or local law or provision in its contract with the Tennessee Valley Authority so requiring, a municipality which operates its own electric distribution system and purchases power from the Tennessee Valley Authority is obligated to distribute to a county in which the system operates that portion of tax-equivalent payments transferred from the revenues of the system to the municipality's general fund which is calculated by applying the county's tax rate to the value of the system's property.

STATUTES INVOLVED

Section 13 of the Tennessee Valley Authority Act of 1933, 48 Stat. 58, 66, as amended June 26, 1940, 54 Stat. 626 (16 U.S.C. 831*l*) provides as follows:

> In order to render financial assistance to those States and local governments in which the power operations of the Corporation are carried on and in which the Corporation has acquired properties previously subject to State and local taxation, the board is authorized and directed to pay to said States, and the counties therein, for each fiscal year, beginning July 1, 1940, the following percentages of the gross proceeds derived from the sale of power by the Cor-

poration for the preceding fiscal year as hereinafter provided, together with such amounts as may be payable pursuant to the provisions hereinafter set forth, said payments to constitute a charge against the power operations of the Corporation: For the fiscal year (beginning July 1) 1940, 10 per centum; 1941, 9 per centum; 1942, 8 per centum; 1943, 7½ per centum; 1944, 7 per centum; 1945, 6½ per centum; 1946, 6 per centum; 1947, 5½ per centum; 1948 and each fiscal year thereafter, 5 per centum. "Gross proceeds," as used in this section, is defined as the total gross proceeds derived by the Corporation from the sale of power for the preceding fiscal year, excluding power used by the Corporation or sold or delivered to any other department or agency of the Government of the United States for any purpose other than the resale thereof. The payments herein authorized are in lieu of taxation, and the Corporation, its property, franchises and income, are hereby expressly exempted from taxation in any manner or form by any State, county, municipality, or any subdivision or district thereof.

The payment for each fiscal year shall be apportioned among said States in the following manner: One-half of said payment shall be apportioned by paying to each State the percentage thereof which the gross proceeds of the power sales by the Corporation within said State during the preceding fiscal year bears to the total gross proceeds from all power sales by the Corporation during the preceding fiscal year; the remaining one-half of said payment shall be apportioned by paying to each State

the percentage thereof which the book value of the power property held by the Corporation within said State at the end of the preceding fiscal year bears to the total book value of all such property held by the Corporation on the same date. The book value of power property shall include that portion of the investment allocated or estimated to be allocable to power: *Provided,* That the minimum annual payment to each State (including payments to counties therein) shall not be less than an amount equal to the two-year average of the State and local ad valorem property taxes levied against power property purchased and operated by the Corporation in said State and against that portion of reservoir lands related to dams constructed by or on behalf of the United States Government and held or operated by the Corporation and allocated or estimated to be allocable to power. The said two-year average shall be calculated for the last two tax years during which said property was privately owned and operated or said land was privately owned: *Provided further,* That the minimum annual payment to each State in which the Corporation owns and operates power property (including payments to counties therein) shall not be less than $10,000 in any case: *Provided further,* That the corporation shall pay directly to the respective counties the two-year average of county ad valorem property taxes (including taxes levied by taxing districts within the respective counties) upon power property and reservoir lands allocable to power, determined as above provided, and all payments to any such county within a State shall be de-

ducted from the payment otherwise due to such State under the provisions of this section. The determination of the board of the amounts due hereunder to the respective States and counties shall be final.

The payments above provided shall in each case be made to the State or county in equal monthly installments beginning not later than July 31, 1940.

Nothing herein shall be construed to limit the authority of the Corporation in its contracts for the sale of power to municipalities, to permit or provide for the resale of power at rates which may include an amount to cover tax-equivalent payments to the municipality in lieu of State, county, and municipal taxes upon any distribution system or property owned by the municipality, or any agency thereof, conditioned upon a proper distribution by the municipality of any amounts collected by it in lieu of State or county taxes upon any such distribution system or property; it being the intention of Congress that either the municipality or the State in which the municipality is situated shall provide for the proper distribution to the State and county of any portion of tax equivalent so collected by the municipality in lieu of State or county taxes upon any such distribution system or property.

The Corporation shall, not later than January 1, 1945, submit to the Congress a report on the operation of the provisions of this section, including a statement of the distribution to the various States and counties hereunder; the effect of the operation of the provisions of this section on State and local finances; an ap-

> praisal of the benefits of the program of the Corporation to the States and counties receiving payments hereunder, and the effect of such benefits in increasing taxable values within such States and counties; and such other data, information, and recommendations as may be pertinent to future legislation.

The provisions of Section 13 as originally enacted, 48 Stat. 58, 66, are set out in Appendix B, *infra,* p. 25).

STATEMENT

The City of Tullahoma, Tennessee (hereafter "City") operates its own electric power distribution system, for which it purchases electric power from TVA pursuant to a contract entered into in 1947. The contract obligates the City not to take out of surplus revenues of the distribution system and place in its general funds an amount "in lieu of taxes" in excess of that calculated by applying the municipal, county, and State property tax rates to the value of the system's property within each of those jurisdictions.

The City transferred from revenues of the distribution system to its general funds the full amount of tax-equivalent payments permitted by the contract. In 1959, Coffee County (hereafter "County") demanded that the City pay over to it the portion of such payments for 1959 which were based on the application of the County's tax rate, amounting to

$27,892.76. The City denied the County's claim and brought this action for a declaratory judgment.[2]

The district court ruled that under the fourth paragraph of Section 13 of the TVA Act, the County was entitled to the amount which it claimed. The court of appeals reversed, one judge dissenting. It held that "[i]n light of the background of the provision, its legislative history, and contemporaneous and long continued administrative interpretation, coupled with the apparent acquiescence by Congress in such interpretation," in the absence of a State or local provision for distribution of tax-equivalent payments transferred into the municipal treasury, "the municipality would be entitled to retain the entire fund representing tax-equivalent payments and no action would lie on the part of the County to recover any part of such payments" (Pet. App. 7a.)

DISCUSSION

The issue presented by this case is of importance both to TVA and to the cities and counties in the area in which TVA power is distributed. However, the

[2] The City filed its action after the decision of the Supreme Court of Tennessee in *Rutherford County* v. *City of Murfreesboro*, 205 Tenn. 362, 326 S.W. 2d 653, certiorari denied, 361 U.S. 919, upholding a claim of the kind which the County asserts here. In an earlier case involving a contract entered into before the enactment of the 1940 amendment to Section 13 of the TVA Act, a similar claim had been rejected. *Rutherford County* v. *City of Murfreesboro*, 202 Tenn. 455, 304 S.W. 2d 635.

government believes that the decision of the court of appeals is correct and therefore does not urge further review.[3]

1. *The Language of the Statute.*—There is no requirement of State or local law that the City pay over to the County any of the money which it transfers in tax-equivalent payments from the surplus revenues of its electric distribution system to its general funds. Nor does anything in the contract between the City and TVA create such an obligation. The County argues that, nevertheless, the fourth paragraph of Section 13 of the TVA Act obligated the City, upon execution of a contract with TVA providing for the transfer of tax-equivalent payments to the City's general funds, to turn over to the County so much of the transferred payments as were based on application of the County's tax rate to the distribution system's property, and obligated TVA to ensure that this was done. However, the language of

[3] The government recognizes that the decision below is in conflict with the decision of the Supreme Court of Tennesse in the second *Rutherford County* case, *supra*, p. 7, n. 2. However, as pointed out in the opinion below, that case "* * * was disposed by overruling a demurrer filed by the City of Murfreesboro to the bill of complaint of Rutherford County in which a construction of the Amendment was sought. From the opinion it is clear that the Supreme Court did not have before it the facts, so clearly developed in the present case, showing the consistent administrative interpretation of the Amendment by TVA, and the special and annual reports as to the operation of the Amendment made by the TVA Board directly to Congress. Also, an examination of the opinion discloses that the Court did not refer to the legislative history of the Amendment * * *." (Pet. App. 17a–18a.)

Section 13 does not create these affirmative obligations.

The fourth paragraph of the section (*supra*, p. 5) is cast entirely in terms of a confirmation of the authority of TVA to enter into a certain kind of contract and expressly rejects a construction which limits such authority. It declares that nothing in the section "*shall be construed to limit the authority* of the Corporation * * * to permit or provide for the resale of power at rates which may include an amount to cover tax-equivalent payments to the municipality in lieu of State, county, and municipal taxes * * *, conditioned upon a proper distribution by the municipality of any amounts collected by it in lieu of State or county taxes * * *" (emphasis added). The County's construction of the statute is thus in direct contradiction of the statutory language.

The permissive language of the fourth paragraph is in marked contrast to the language which Congress used elsewhere in the same section when it did intend to establish specific requirements. In the first paragraph (supra, p. 2), TVA is "authorized and directed" to pay to the States and counties specific percentages of its annual gross proceeds from the sale of power. The second and third paragraphs (supra, pp. 3–5), provide for the apportionment of such payments among the States; establish a minimum annual payment to each State, both on the basis of taxes previously collected and as a fixed amount; provide for direct payments to the counties based on

taxes previously collected by them, and provide that payments shall be made in "equal monthly installments." These provisions differ from those contained in the fourth paragraph not only in the former's use of mandatory language, but also because they establish fixed percentages and amounts to be paid by TVA to the States and counties. The fourth paragraph speaks only of "a *proper distribution* by the municipality * * *" (emphasis added).

Apart from these contrasts, the County's argument that by virtue of Section 13 alone it is entitled to exactly the amount of tax-equivalent payments which are based on an application of the county tax rate reads into the words "proper distribution" a specificity contradicted by the further statement in the fourth paragraph that it is the intention of Congress "*that either the municipality or the State* in which the municipality is situated *shall provide for the proper distribution to the State and county*" (emphasis added) of tax-equivalent payments based on State and county taxes.

The authority to which Congress referred and which it confirmed in the fourth paragraph is that conferred by the third proviso of Section 10 of the TVA Act (16 U.S.C. 831i), added in 1935 (49 Stat. 1076), which authorizes TVA to "include in any contract for the sale of power such terms and conditions, including resale rate schedules, * * * as in its judgment may be necessary or desirable for carrying out the purposes" of the Act. Before 1940, TVA had exercised its authority under Section 10 to prevent municipalities from charging excessive rates for elec-

tric power and using the extra revenues for general municipal purposes.[4] TVA included in its contracts with municipal distributors a provision limiting the tax-equivalents which could be drawn from the electric distribution systems to an amount calculated by applying the municipal, county, and State tax rates to the book value of the electric systems.[5] The municipalities were encouraged to distribute a portion of the amount so collected to the State and counties in which they operated, but were not required to do so. Nor did TVA specify what it would regard as an appropriate distribution. Its position was that these were matters which should be left to State and local law.

The fourth paragraph of Section 13 simply protected the authority of TVA to enter into contracts of this type against any contrary inference which might be drawn from the addition to the Act of provisions entitling the States and counties to payments directly from TVA. In addition, Congress expressed its intention that the municipalities should make a "proper distribution" of the tax-equivalent payments which they received. But it clearly left this matter within the control of the States, expressing no directive either to TVA or to the municipalities.[6]

2. *Legislative History.*—As originally enacted in

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[4] Such a practice would be incompatible with the objective of the TVA Act to provide power for "domestic and rural use at the lowest possible rates and in such manner as to encourage increased domestic and rural use of electricity," Sec. 11, 48 Stat. 64, 65, 16 U.S.C. 831j.

[5] TVA had entered into wholesale power contracts with more than 70 municipalities before the enactment of the present Section 13 in 1940. 1940 TVA Ann. Rep. 26.

[6] What would constitute a "proper distribution" might vary from case to case. For example, county tax rates in Tennessee

1933, Section 13 (App. B, p. 25) authorized tax-equivalent payments only to Alabama and Tennessee, the States in which Wilson Dam and Norris Dam are located.[7] By 1940, TVA had acquired generating and transmission properties in a number of other States. Proposals for legislation to extend the provisions of Section 13 were prepared by TVA with the cooperation of State and local officials, and embodied in identical bills introduced in the 76th Congress (S. 2925; H.R. 7424). The first two paragraphs of the proposed amended Section 13 provided for payments to the States, generally in the same manner as was embodied in the final enactment (see App. C, pp. 27–29). The third and fourth paragraphs read as follows:

> The payments above provided shall in each case be made to the State not later than July 31 of each year, and it is the intention of the Congress that each State shall redistribute said payments or a portion thereof to counties and

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are notoriously high and assessments notoriously low. Were a county paid an amount based on the application of the county tax rate to the full value of the city's electric distribution system, it would receive far more than if the system were assessed like private property. In addition, the proper distribution of tax-equivalent payments might be affected by the apportionment of tax dollars between a particular city and county.

[7] The Act transferred to TVA custody of Dam Numbered 2 (Wilson Dam) in Alabama (Sec. 7, 48 Stat. 63, 16 U.S.C. 381f) and specifically authorized construction of Cove Creek (Norris) Dam in Tennessee (Sec. 17, 48 Stat. 67; see 16 U.S.C. 831p). It also authorized generally the construction of dams and other works in the Tennessee River and its tributaries (Sec. 4(j), 48 Stat. 61, as amended, 16 U.S.C. 831c(j)).

> other local taxing districts affected by the program of the Corporation.
>
> It is likewise intended that each of the said States shall in like manner redistribute all payments made in lieu of taxation paid to municipalities by municipal authorities as provided in contracts made for the purchase of power from the Corporation.

The latter paragraph, which contained the only refence in the proposed amendment to the tax-equivalent payments transferred from municipal distribution systems to the municipalities, clearly displayed Congress' intention to leave the distribution of such payments within each State to the control of the States themselves.

Any doubts on this score are eliminated by an exchange between Senator Norris, who introduced the bill in the Senate, and Mr. William C. Fitts, Jr., general counsel of TVA, during the Senate committee hearings on the bill:

> Senator Norris. Therefore, so far as Congress is concerned, we can put out of the picture the amount of the so-called "tax displacement" that arises from the transfer of these distribution properties, because the State has the power and the means of getting back those taxes that are already being paid. In this bill now pending there is a provision—because the States have not done that in the past—there is a provision here expressing the intention of Congress, and that has always been the intention of Congress.
>
> Mr. Fitts. Correct.

Senator NORRIS. *And while it probably has no legal effect, it rather notifies the States that that is what Congress expects them to do.*

Mr. FITTS. *It is a policy declaration.*

Senator NORRIS. *It is a State matter entirely.*

Mr. FITTS. So that the only problem that this bill attempts to deal with directly, and the only problem that Congress can deal with directly, is the tax loss or displacement on that portion of the properties that are actually owned in the name of the United States.

Senator NORRIS. That is right. [*Hearing on S. 2925 Before a Subcommittee of the Senate Committee on Agriculture and Forestry,* 76th Cong., 3d Sess., p. 9 (1940); emphasis added.]

Senator Norris expressed the same views later in the hearings, during the testimony of Mr. John W. Lapsley, counsel for the Alabama State Revenue Department:

Senator NORRIS. * * * one of the difficulties that exists right now, as I understand it, and that I think is entirely due to the lack of any State law in any State down there, as far as I know—I thought when the original act was passed that the several States would pass laws that would rectify it—for instance, if they pay into a city, city A, let us say, $100,000 in lieu of taxes, it was the intention of Congress, I take it, when it passed the law, or it was the intention of the T.V.A. when it made the contract to sell the power to that municipality A, that it should really be in lieu of taxes, and therefore it should be divided up when it was paid to the city, just the same as though they would have divided it up if it had been pri-

vately owned. Some of it would have gone to the State, some to a school district, and some to other subdivisions. But, as I understand it, the State never passed any law requiring that division, and the municipality, naturally, keeps it all.

Mr. LAPSLEY. Yes, sir.

Senator NORRIS. And the county does not get any of it.

Mr. LAPSLEY. Nor the State either.

Senator NORRIS. Nor the State either. Now, that is one of the difficulties we wanted to rectify and have put in this bill. *While we cannot legislate on that, being a State matter,* we have gone so far as to state in here that it is the intention of Congress, which we did not state originally—it is the intention of Congress to do that very thing.

Mr. LAPSLEY. Well, Mr. Chairman, you state that it is the intention of Congress that the State shall do what I had in mind, but you do not express the intention of Congress that the cities with whom T.V.A. contracts shall do the same thing.

Senator NORRIS. Oh, yes; *the States could provide by statute* that when any municipality received anything in lieu of taxation, it should be subdivided just the same as though it was taxes—*which we cannot say* * * *. [*Id.* at p. 33; emphasis added.] [8]

[8] During the committee hearings, several witnesses expressed the view that Tennessee municipalities were without authority to make payments to the counties under existing state law. See *id.* at p. 24: Hearings on H.R. 7424 (and other similar

As reported to the Senate from committee, S. 2925 provided that a portion of TVA's payments to the States should be made directly to the counties. 86 Cong. Rec. 5238–5239. This change led to the elimination of the statement in the third paragraph of Congress' intent that the States should redistribute a portion of TVA's payments to them to the counties and other "local taxing authorities," *id.* at p. 5239, and to corresponding stylistic changes in the fourth paragraph.[9] The present provisions of the fourth paragraph were inserted in the bill in response to an amendment offered on the Senate floor by Senator Hill of Alabama. *Id.* at p. 5247. The amendment was one of several offered by Senator Hill and described by him as "minor perfecting amendments" involving "no dispute," *id.* at p. 5245. It was accepted without any discussion beyond Senator Norris'

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bills) before the House Committee on Military Affairs, 76th Cong., 3d Sess. pp. 351, 367, 471 (1940). This view was apparently based on the Tennessee Revenue Bond Law (Tenn. Code Ann. 6–1301 *et seq.*) and the Tennessee Municipal Electric Plant Law (Tenn. Code Ann. 6–1501 *et seq.*), both still in force, which specify the purposes for which municipal electric revenues may be used.

[9] The changes made in the fourth paragraph were as follows, words eliminated being marked out and words added being italicized):

"It is ~~likewise~~ intended *by Congress* that each of the said States shall ~~in like manner redistribute~~ *distribute* all payments made in lieu of taxation paid to municipalities by municipal authorities as provided in contracts made for the purchase of power from the Corporation" (86 Cong. Rec. 5247).

statement that he saw "no objection to it" and thought it "a very good amendment." *Id.* at p. 5247.[10]

The bill was passed in this form by the Senate (*id.* at p. 5247), and later enacted as Section 39 of the Emergency Relief Appropriation Act, fiscal year 1941 (54 Stat. 611, 626–627).[11]

The legislative history of Section 13 thus fully supports its construction as only an affirmation of TVA's authority to require in its contracts with municipalities that they distribute tax-equivalent payments as a condition of such payments, and an expression of congressional intent that there be such distribution. It is beyond dispute that the language of the original bill did no more than express this intent. The language of the final enactment replaced that of the original bill with no indication of a change in substance and, indeed, every indication that the substance was unchanged.

3. *Administrative Interpretation.*—TVA has consistently construed Section 13 not to require either that a provision for the distribution of tax-equivalent payments be included in its contracts with municipalities or that the municipalities make such distribution in the absence of such a provision. This construction has repeatedly been communicated to Congress.

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[10] TVA's general counsel had advised Senator Norris by letter dated April 3, 1940 (quoted in full in the Pet. at p. 11) that in his view the proposed amendments did not in any way "alter the substance of the bill as reported."

[11] No bill was reported from committee in the House. The Senate attached the provisions of its bill, as previously passed, to the Emergency Relief Appropriation Bill, 86th Cong. Rec. 8076.

The final paragraph of Section 13 (*supra*, pp. 5–6) required TVA to submit to Congress, not later than January 1, 1945, a report on the operation of its provisions. The report was submitted on December 22, 1944. Included in the discussion under the heading "Tax and In-Lieu Payments by Local Distribution Systems" was the following (p. 25):

> The power contracts and agreements, through which the TVA exercises its responsibilities for the distribution of electric power, make provision for payments by municipal systems in lieu of state and local property taxes. These in-lieu payments are usually computed by applying the current property tax rates of each jurisdiction to the book value of the electric property within such jurisdictions.
>
> In the absence of state legislation or special local agreements to the contrary the entire state and local ad valorem property tax equivalent of each system is paid into the general fund of the owning municipality.

Elsewhere, the same report stated (p. 41):

> Taxes paid by cooperatives go to the states, counties, and cities in which the property is located. On the other hand, the equivalent of the former state and county taxes on municipally owned systems is commonly paid into the general funds of the municipalities owning the systems, and used for various municipal purposes.

In addition to this report dealing specifically with the operation of Section 13, the TVA Act requires TVA to file annual reports (Sec. 9(a), 48 Stat. 63, 16 U.S.C. 831h(a)) with the President and Congress. Such reports must include copies of all power contracts into which TVA has entered during the year (Sec. 14, as amended by 49 Stat. 1077, 16 U.S.C. 831m). Since 1940, every report, except those for fiscal years 1942, 1952 and 1953, has contained copies of at least one power contract with a municipality reflecting TVA's construction of the statute.[12]

Having been regularly advised of TVA's practice under Section 13 of the Act, Congress has never questioned it or taken any steps to amend the statute in this respect, although other provisions have been amended since 1940.[13] If the matter were otherwise doubtful, this clear congressional acquiescence in long-standing administrative practice would be determinative. *E.g., United States* v. *Leslie Salt Co.*, 350 U.S. 383, 396–397; *Norwegian Nitrogen Products Co.* v. *United States*, 288 U.S. 294, 311–315.

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[12] See, for example, the provisions of the contract between TVA and the City of Tullahoma, App. A, p. 21, which appeared in the Annual Report for the fiscal year ended June 30, 1948.

[13] *E.g.*, Act of July 18, 1941, 55 Stat. 599; Act of Nov. 21, 1941, 55 Stat. 773; Act of July 12, 1952, 66 Stat. 591.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

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DECEMBER 1964.

APPENDIX A

PROVISIONS OF THE AGREEMENT BETWEEN THE TENNESSEE VALLEY AUTHORITY AND THE CITY OF TULLAHOMA ENTERED INTO AS OF THE FIRST DAY OF JULY, 1947

* * * * *

5. *Resale Rates:* In order to assure a wide and ample distribution of electric energy in the area served by Municipality, Authority and Municipality agree as follows:

(a) Municipality agrees that the power purchased hereunder shall be sold and distributed to the ultimate consumer without discrimination between consumers of the same class, and that no discriminatory rate, rebate, or other special concession will be made or given to any consumer.

(b) Municipality agrees to charge consumers, including all municipal and governmental customers and departments, the rates set forth for the several classes thereof in Schedules R, G, and SL of the Schedule of Rates and Charges, and not to depart therefrom except by agreement of the parties. Additional resale schedules for special classes of consumers or special uses of electric energy may be added from time to time by agreement of the parties.

(c) If it should appear that the rates provided for in said resale schedules, including surcharges where applicable, do not produce revenues sufficient to provide for the operation and maintenance of Municipality's electric system on a self-supporting and financially sound basis, including requirements for interest and principal payments on notes, bonds, or other

evidences of long-term indebtedness issued or assumed by Municipality in the acquisition, extension, or improvement of its electric system (hereinafter called the "System Indebtedness"), Authority and Municipality shall agree upon, and Municipality shall put into effect, such changes in rates as will provide for the increased revenues necessary to place the system upon a self-supporting and financially sound basis.

6. *Disposition of Revenues:* Municipality agrees to dispose of its gross revenues from electric operations in the following manner:

(a) Revenues shall first be used for the payment of all current operating expenses, including salaries, wages, cost of materials and supplies, power at wholesale, and insurance.

(b) From remaining revenues Municipality shall next currently provide for the payment at maturity of interest accrued on all System Indebtedness, and for amortization charges and/or sinking fund payments thereon.

(c) Thereafter, revenues shall be used currently to set up reasonable reserves for replacements, new construction, and contingencies, and to provide a reasonable amount of cash working capital.

(d) From remaining revenues Municipality may thereafter pay into its General Fund a return on its investment, as provided in the Financial and Accounting Policy in the Schedule of Terms and Conditions attached hereto.

(e) From remaining revenues Municipality may thereafter pay into its General Fund a tax equivalent as provided in the Financial and Accounting Policy in the Schedule of Terms and Conditions attached hereto.

(f) All remaining revenues shall be considered surplus revenues and shall serve as a basis for the reduction or elimination of surcharges to consumers, and thereafter for the reduction

of rates; provided, however, that Municipality may, subject to the consent of Authority, devote part or all of such surplus revenues to the purchase or retirement of System Indebtedness prior to maturity. Surplus revenues shall be computed as of June 30 of each year.

* * * * *

10. *Purpose of Contract:* It is hereby recognized and declared that, pursuant to the obligations imposed by the Tennessee Valley Authority Act of 1933 as amended, Municipality's operation of a municipal electric distribution system and Authority's wholesale service thereto are undertaken primarily for the benefit of ratepayers and that Municipality shall receive from the operation thereof for the benefit of its General Fund, to be used for any permissible municipal purpose, only (a) a return on any investment made from general funds in the electric system, and (b) an amount in lieu of taxes, representing a fair share of the cost of government properly to be borne by such system. In accordance with these principles, which are mutually recognized as of the essence of this agreement, Municipality agrees to operate its electric system and to maintain its financial accounts and affairs in full and strict accordance with the provisions of this Power Contract.

* * * * *

SCHEDULE OF TERMS AND CONDITIONS

* * * * *

10. *Financial and Accounting Policy:* Municipality agrees to be bound by the following statement of financial and accounting policy:

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(c) Payments in Lieu of Taxes. Municipality may take from the electric department revenues or funds for the general funds of Munic-

ipality an amount in lieu of taxes (representing a fair share of the cost of government properly to be borne by its electric distribution system) to be determined subject to the terms and conditions hereafter stated.

(1) To the extent surplus revenues are available after the satisfaction of all items set forth in subsections (a) through (d) of section 6 of the Power Contract, Municipality *may* take from the electric department revenues or funds for the general funds of Municipality an amount calculated by applying the prevailing municipal property tax rate to the value of the property used in electric operations within the municipal limits.

(2) To the extent surplus revenues are available after the satisfaction of all items set forth in subsections (a) through (d) of section 6 of the Power Contract, Municipality may take from the electric department revenues or funds for the general funds of Municipality an amount calculated by applying the prevailing county and State tax rates to the value of the electric system; provided, however, that if Municipality shall, directly or indirectly, and voluntarily or otherwise, make any payment or payments out of electric system revenues or funds to the State and/or any political subdivision thereof other than Municipality in satisfaction of a claim or obligation for taxes or payments in lieu of taxes, or in consideration of or as compensation for franchises or operating rights, then and in such event, and whether or not such payment or payments be measured by taxes or tax values at any time levied or assessed, the county and/or state tax equivalents to which Municipality would otherwise be entitled under this subsection (2) shall be reduced by the amount of such payment or payments; and provided further, that no such pay-

ment shall operate to reduce the tax equivalents to which Municipality is entitled under subsection (1) immediately preceding. It is understood and agreed, however, that Municipality s all not, in respect of any year, voluntarily make or agree to make any payment or payments of the kind referred to in this subsection when such payment or payments, either separably or in conjunction with all other similar payments in respect of that year, voluntary or otherwise, would exceed the amount derived by applying the prevailing county and state tax rates to the value of the electric system.

(3) For the purposes of (1) and (2) above the value of the electric system or any part thereof, shall be the book cost (determined initially as provided in the letter agreement of even date herewith) of the tangible plant attributable to such system or to such part thereof, less the proportion of the depreciation reserve properly allocable thereto as of the date of determination, plus the book cost of materials and supplies in an amount not exceeding a total of $10,000, and working capital in an amount not exceeding a total of $10,000. The said value shall be determined as of the beginning of each taxable year.

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APPENDIX B

SECTION 13 OF THE TENNESSEE VALLEY AUTHORITY ACT OF 1933, AS ORIGINALLY ENACTED, 48 STAT. 58, 66

SEC. 13. Five per centum of the gross proceeds received by the board for the sale of power generated at Dam Numbered 2, or from any other hydropower plant hereafter constructed in the State of Alabama, shall be paid to the State of Alabama; and 5 per cen-

tum of the gross proceeds from the sale of power generated at Cove Creek Dam, hereinafter provided for, or any other dam located in the State of Tennessee, shall be paid to the State of Tennessee. Upon the completion of said Cove Creek Dam the board shall ascertain how much additional power is thereby generated at Dam Numbered 2 and at any other dam hereafter constructed by the government of the United States on the Tennessee River, in the State of Alabama, or in the State of Tennessee, and from the gross proceeds of the sale of such additional power 2½ per centum shall be paid to the State of Alabama and 2½ per centum to the State of Tennessee. These percentages shall apply to any other dam that may hereafter be constructed and controlled and operated by the board on the Tennessee River or any of its tributaries, the main purpose of which is to control flood waters and where the development of electric power is incidental to the operation of such flood-control dam. In ascertaining the gross proceeds from the sale of such power upon which a percentage is paid to the States of Alabama and Tennessee, the board shall not take into consideration the proceeds of any power sold or delivered to the Government of the United States, or any department or agency of the Government of the United States, used in the operation of any locks on the Tennessee River or for any experimental purpose, or for the manufacture of fertilizer or any of the ingredients thereof, or for any other governmental purpose: *Provided,* That the percentages to be paid to the States of Alabama and Tennessee, as provided in this section, shall be subject to revision and change by the board, and any new percentages established by the Board, when approved by the President, shall remain in effect until and unless again changed by the board with the ap-

proval of the President. No change of said percentages shall be made more often than once in five years, and no change shall be made without giving to the States of Alabama and Tennessee an opportunity to be heard [48 Stat. 66].

APPENDIX C

S. 2925, INTRODUCED IN THE SENATE BY SENATOR NORRIS ON JULY 31, 1939, 76TH CONGRESS, 1ST SESSION

A BILL To amend the Tennessee Valley Authority Act of 1933.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 13 of the Tennessee Valley Authority Act of 1933 be, and the same is hereby, amended to read as follows:

"SEC. 13. In order to render financial assistance to those States and local governments in which the power operations of the Corporation are carried on and in which the Corporation has acquired properties previously subject to State and local taxation, the board is authorized and directed to pay to said States, for each fiscal year, beginning July 1, 1940, the following percentages of the gross proceeds derived from the sale of power by the Corporation for the preceding fiscal year as hereinafter provided, together with such additional amounts as may be payable pursuant to the provisions hereinafter set forth, said payments to be in lieu of taxes and to constitute a charge against the power operations of the Corporation for the fiscal year then beginning and to be made upon condition that no State, county, or local taxes shall

be assessed or levied against the property, operations, or business of the Corporation: For the fiscal year (beginning July 1, 1940) 10 per centum; 1941, 9 per centum; 1942, 8 per centum; 1943, 7½ per centum; 1944, 7 per centum; 1945, 6½ per centum; 1946, 6 per centum; 1947, 5½ per centum; 1948 and each fiscal year thereafter, 5 per centum. 'Gross proceeds', as used in this section, is defined as the total gross proceeds derived by the Corporation from the sale of power for the preceding fiscal year, excluding power used by the Corporation or sold or delivered to any other department or agency of the Government of the United States.

"The payment for each fiscal year shall be apportioned among said States in the following manner: One-half of said payment shall be apportioned by paying to each State the percentage thereof which the gross proceeds of the power sales by the Corporation within said State during the preceding fiscal year bears to the total gross proceeds from all power sales by the Corporation during the preceding fiscal year; the remaining one-half of said payment shall be apportioned by paying to each State the percentage thereof which the book value of the power property held by the Corporation within said State at the end of the preceding fiscal year bears to the total book value of all such property held by the Corporation on the same date. The book value of power property shall include that portion of the investment allocated or estimated to be allocable to power: *Provided,* That the minimum annual payment to each State shall not be less than the two-year average of the State and local ad valorem property taxes levied against power property purchased and operated by the Corporation in said State plus that portion of reservoir lands related to dams constructed by or on behalf of the

United States Government and allocated or estimated to be allocable to power. The said two-year average shall be calculated for the last two tax years during which said property was privately owned and operated: *Provided, further,* That the minimum annual payment to each State in which the Corporation owns and operates power property shall not be less than $10,000 in any case. The determination of the board of the amounts due hereunder to the respective States shall be final.

"The payments above provided shall in each case be made to the State not later than July 31 of each year, and it is the intention of the Congress that each State shall redistribute said payments or a portion thereof to counties and other local taxing districts affected by the program of the Corporation.

"It is likewise intended that each of the said States shall in like manner redistribute all payments made in lieu of taxation paid to municipalities by municipal authorities as provided in contracts made for the purchase of power from the Corporation.

"The Corporation shall, not later than January 1, 1945, submit to the Congress a report on the operation of the provisions of this section, including a statement of the distribution to the various States hereunder and the redistribution by the States of the amounts paid to them; the effect of the operation of the provisions of this section on State and local finances; an appraisal of the benefits of the program of the Corporation to the States receiving payments hereunder and to the local subdivisions thereof, and the effect of such benefits in increasing taxable values within such States and local subdivisions; and such other data, information, and recommendations as may be pertinent to future legislation."

U.S. GOVERNMENT PRINTING OFFICE: 1944